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IN THE

Supreme Court of the United States

October Term, 1945

No. 576

FRED R. REEVES, JOHN H. BRADLEY, WILLIAM L. DRISCOLL and LYNWOOD C. FRITTER, *Petitioners,*

vs.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

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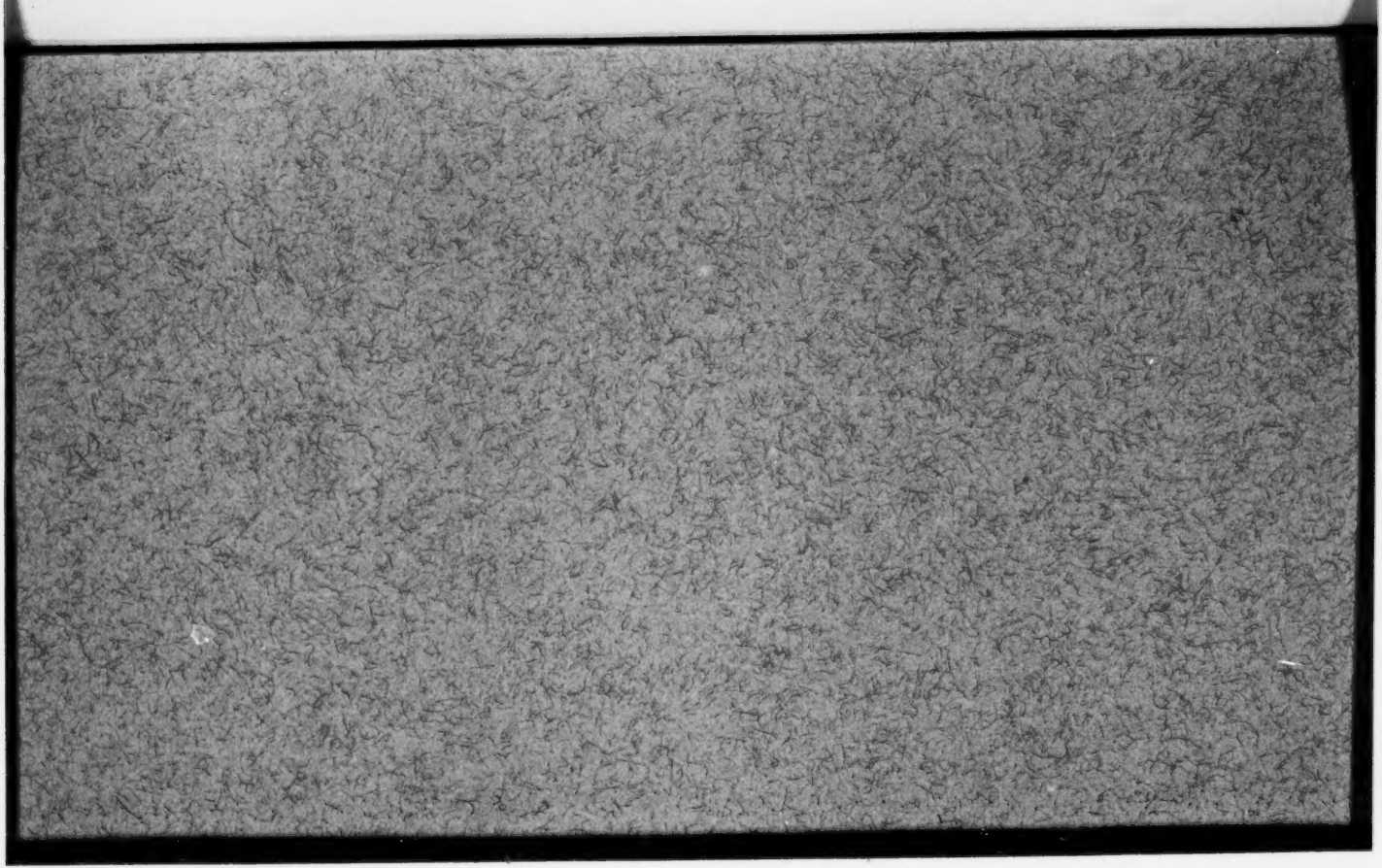

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STATUTES

In The

Supreme Court of the United States

October Term, 1945

No.....

Fred R. Reeves,
John H. Bradley,
William L. Driscoll and
Lynwood C. Fritter,
Petitioners,

vs.

Chester Bowles, Administrator,
Office of Price Administration,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

Fred R. Reeves, John H. Bradley, William L. Driscoll and Lynwood C. Fritter, the petitioners above mentioned, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for

the District of Columbia, their Nos. 8937, 8940, 8941 and 8942, affirming, (after the allowance of special appeals), the Order overruling the Motions to Dismiss the Complaints in the Civil Actions in the District Court of the United States for the District of Columbia. The Judgment of the United States Court of Appeals for the District of Columbia was entered on July 9, 1945 (R. 27). A Motion for Rehearing was filed in that Court on July 20, 1945 (R. 28), and denied on August 6, 1945 (R. 31). Issuance of the mandate of the United States Court of Appeals was stayed by that Court until November 1, 1945.

Individual Complaints were filed in the District Court of the United States for the District of Columbia by the respondent against a number of taxicab owners situated similarly to the petitioners and by stipulation duly entered into in the District Court it was agreed that the decision of the United States Court of Appeals in the aforementioned cases, Nos. 8937, 8940, 8941 and 8942, in which special appeals were granted and which cases were consolidated for argument in that Court, should be controlling in all of the cases filed in the District Court; but one judgment was rendered by the Court of Appeals, embracing the four cases consolidated for argument in that Court.

SUMMARY STATEMENT OF MATTERS INVOLVED

The respondent, as Administrator, Office of Price Administration, filed Complaints against a number of owners of taxicabs, for injunction and treble damages under the provisions of the Emergency Price Control Act of 1942, Chapter 26, 56 Stat. 23; U. S. Code, Title 50 App., Section 901, et seq, alleging in substance that all of the defendants in said Complaints, among whom were the petitioners herein, were owners of taxicabs which they rented to cab drivers at a certain sum of money per day, or other convenient periods of time, for the use of cab drivers in their trade or business of

transporting passengers for hire in the District of Columbia; that pursuant to the Emergency Price Control Act of 1942, the respondent had more than one year prior to the filing of the suits, issued regulations establishing, among other things, the rental rate or charges for taxicabs to drivers for use in their trade or business; and that the defendants therein, among whom are the petitioners herein, had violated the Emergency Price Control Act of 1942, as amended, and the regulations pursuant thereto, (1) in that they had failed and neglected to prepare and keep for examination by any person during ordinary business hours a statement showing their maximum rates or charges for such rental of taxicabs, and (2) since August 1, 1943, had rented taxicabs to cab drivers for use in the course of the driver's trade or business at prices in excess of respondents' lawful ceiling prices.

While some of the cases involved less, in most of them the respondent averred on information and belief that the overcharges amounted to $5,000.00, and asked for a judgment for treble damages in the sum of $15,000.00 and an injunction pendente lite, requiring and directing the respondents to immediately prepare and keep for examination by any person during ordinary business hours a complete statement of the lawful maximum rates or charges for the rental of such taxicabs and to submit a copy immediately upon completion thereof to the Price Specialist of the Office of Price Administration in the District of Columbia, and likewise praying that the respondents be restrained from offering to rent taxicabs at rates or charges in excess of the respondents' lawful maximum rates or charges as established by the regulations (R. 2, 11, 14, 19).

The respondents filed motions to dismiss the complaints and argued in the District Court that the Act and regulations did not apply to them; that they were engaged in the business of a public utility and a common carrier within the District of Columbia and were expressly exempted from the

provisions of the Emergency Price Control Act of 1942, and that the Public Utilities Commission of the District of Columbia is the duly constituted legal agency or authority having regulatory jurisdiction over the business and rates of the respondents (R. 6, 13, 16, 21).

The District Court, after argument by counsel, wrote a memorandum opinion denying the motions to dismiss (R. 7). Thereafter, an Order was entered overruling the motions of the respondents (R. 8), from which Order special appeals were allowed by the United States Court of Appeals in the four cases involved herein, which cases were consolidated for argument in the Court of Appeals; in a written opinion, that Court affirmed the Order of the Court below and one judgment was rendered by the Court of Appeals embracing the four cases herein involved, and by the stipulation of counsel for the respective parties the decision and judgment of the Court of Appeals is binding in all of the cases filed in the District Court.

QUESTIONS PRESENTED

1. Whether petitioners are engaged in the business of a public utility and common carrier in the District of Columbia and subject to the exclusive regulation, control and supervision of the Public Utilities Commission of the District of Columbia.

2. Whether the regulations promulgated pursuant to the Emergency Price Control Act of 1942, as amended, apply to the business in which the petitioners are engaged.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

1. The United States Court of Appeals for the District of Columbia has not given proper effect to the decisions of this Court in the cases of *Terminal Taxicab Co. v. Kutz*, 241 U. S., 252, and *Davies Warehouse Co.* v. *Bowles*, 321 U. S., 144.

2. The United States Court of Appeals, by mistaking or

ignoring the nature of the questions involved, decided a question not presented to it, and has left undecided a question of general importance which was squarely before it, i.e., do the pertinent regulations, properly construed, apply to the business of the petitioners.

WHEREFORE, it is respectfully prayed that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Appeals for the District of Columbia, commanding that court to certify and send to this court for its review and determination a full and complete transcript of the record and of proceedings in the case at Bar, their Nos. 8937, 8940, 8941 and 8942, and that a judgment of said United States Court of Appeals for the District of Columbia may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as this Honorable Court may deem just and proper.

And your petitioners will ever pray.

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In The

Supreme Court of the United States

October Term, 1945

Nos. 8937, 8940, 8941 and 8942

Fred R. Reeves
John H. Bradley
William L. Driscoll and
Lynwood C. Fritter
Petitioners

-vs-

Chester R. Bowles, Administrator
Office of Price Administration
Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia was rendered July 9, 1945, and is incorporated in the record at Page 24.

JURISDICTION

The jurisdiction of this Court is invoked under Section

240, Judicial Code, as amended by the Act of February 13, 1925—43 Stat. 936 and the Emergency Price Control Act; 56 Stat. 23; 50 U. S. C. A. App. Sections 901-946.

STATEMENT OF CASE

The petitioners are owners of taxicabs operating in the District of Columbia. The respondent, as administrator, Office of Price Administration, filed complaints in the District Court of the United States for the District of Columbia against the Petitioners, praying for an injunction and treble damages under the provisions of the Emergency Price Control Act of 1942, Chapter 26, 56 Stat. 23; U. S. Code, Title 50, App. Section 901 et seq., alleging in substance that all of the defendants were owners of taxicabs which they rented to cab drivers at a certain sum of money per day, or other convenient periods of time, for the use of the cab drivers in their trade or business of transporting passengers for hire in the District of Columbia; that pursuant to the Emergency Price Control Act of 1942, the respondent had more than one year prior to the filing of the complaints, issued regulations establishing, among other things, the rental rate or charges for taxicabs; and that the defendants therein, among whom are these petitioners, have violated the Emergency Price Control Act of 1942, as amended, and the regulations promulgated pursuant thereto in that they (1) had failed and neglected to prepare and keep for examination by any person during ordinary business hours a statement showing ther maximum rates or charges for such rental of taxicabs, and (2) since August 1, 1943, had rented taxicabs to cab drivers for use in the course of the driver's trade or business at prices in excess of respondent's lawful ceiling prices.

The petitioners (defendants in the District Court) moved to dismiss the complaints contending: (1) that the complaints failed to state a claim against defendants upon

which relief could be granted, (2) that the defendants were engaged in the business of a public utility and a common carrier within the District of Columbia and were expressly exempted from the provisions of the Emergency Price Control Act of 1942, (3) that by a proper construction and application of the regulations issued by the Administrator, Office of Price Administration, the defendants were exempt from regulatory jurisdiction of the Office of Price Administration. The District Court overruled the motions. A special appeal was allowed by the United States Court of Appeals for the District of Columbia in which four cases were presented, it having been stipulated by the parties that the opinion of the Court in these four cases would control all the other suits.

The Court below affirmed the District Court holding, in effect, that the Court had no jurisdiction to pass upon the question of the validity of the regulation as that was a question for the United States Emergency Court of Appeals. It was held that there has been no decision by the Commission (Public Utilities Commission, District of Columbia) or any Court declaring appellants (petitioners) to be common carriers within the Public Utilities Act (District of Columbia). The Court below, obviously, ignored or overlooked the patent fact that petitioners were asking that the Court interpret and construe the applicable regulations and not pass upon their validity. Of course, had the petitioners been seeking to have the regulations declared invalid they would have filed a proper complaint in the Emergency Court of Appeals pursuant to Section 204 (a) of the Emergency Price Control Act, noting that Section 204 (d) of that Act expressly provides that the Emergency Court of Appeals and the Supreme Court upon review shall have exclusive jurisdiction to determine the validity of any regulation or order issued under Section 2 of any price schedule effective in accordance with the provisions of Section 206, and of any provision of any such regulation, order or price schedule and that no Court, Federal, State or Territorial

shall have jurisdiction or power to consider the validity of any such regulation, order or price schedule.

The petitioners contend that they are public utilities and common carriers in the District of Columbia, so classified by statute, and recognized as such by the Public Utilities Commission of the District of Columbia, and that the applicable regulations issued by the Office of Price Administration when properly construed and applied expressly exempt public utilities and common carriers from the jurisdiction of the Office of Price Administration. The petitioners did not contend that the Office of Price Administration could not regulate the rental prices of taxicabs but they did and do contend that the regulations of the Office of Price Administration involved in these cases, do not when fairly construed and applied, extend to the regulation of the rental prices of taxicabs *which are engaged in the business of a public utility and common carrier and subject to regulation by the Public Utilities Commission, as is the case here.*

QUESTIONS PRESENTED

(1) Are the petitioners common carriers and public utilities in the District of Columbia, and subject to the exclusive jurisdiction of the Public Utilities Commission?

(2) Do the regulations of the Office of Price Administration, when fairly interpreted, apply to the business of the petitioners?

SPECIFICATION OF ERRORS

The Court below erred:

(1) In holding that there has been no decision by the Commission (Public Utilities Commission) or any Court declaring appellants to be common carriers within the Public Utilities Act (District of Columbia);

(2) In failing and refusing to interpret and apply the

applicable regulations of the Office of Price Administration, which was a most vital part of the case;

(3) In holding that the question before the Court was the validity of the Office of Price Administration's regulations; and

(4) In affirming the judgment of the District Court.

STATUTES AND REGULATIONS INVOLVED

District of Columbia Code, 1940 Edition; Title 43, Sections 103, 104, 106, 111, 122, 408 and 411 to 417, inclusive. Title 47, Sections 23, 31 (a) and (d). Emergency Price Control Act of 1942, 56 Stat. 23, 50 U. S. C. A. App. Sections 901-946. Office of Price Administration Maximum Price Regulation 165, as amended, Section 1499.101 (c); (4); (60); Section 1499.116 (a), Office of Price Administration Revised Maximum Price Regulation 165, issued July 1, 1944, effective August 1, 1944; Section 1499.23 (a) (16). Maximum Price Regulation 571 promulgated January 29, 1945, effective February 3, 1945; Sections 1450.1; 1450.3, Definitions (d) and Section 1450.16; Office of Price Administration Supplementary Regulation 11, issued June 16, 1942 (7 F.R. 4543) as revised August 13, 1942 (7 F. R. 6426) as further revised by Amendment No. 45 dated March 24, 1945 (9 F. R. 1331) as again revised April 25, 1944 by amendment No. 50 (9 F. R. 5722-23).

SUMMARY OF ARGUMENT

1. The Emergency Price Control Act expressly excludes from the Administrator, Office of Price Administration, the power and authority to regulate charges by common carriers or public utilities and it is clear under the applicable judicial precedents that the business of the petitioners, and all aspects of the same, are that of common carriers and public utilities and accordingly under the exclusive

jurisdiction and regulatory power of the Public Utilities Commission of the District of Columbia.

2. The regulations of the respondent, issued pursuant to the provisions of the Emergency Price Control Act, when fairly construed and interpreted, do not apply to the business of the petitioners.

ARGUMENT

I

The petitioners are engaged in a business as a common carrier and public utility in the District of Columbia and are subject to the jurisdiction and regulatory power of the Public Utilities Commission of the District of Columbia.

The Court below in its opinion stated:

> "There has been no decision by the Commission or *any Court* declaring appellants to be common carriers within the Public Utilities Act."

In *Terminal Cab Company* vs. *Harding* 43 App. D. C. 120, 123, 124, the United States Court of Appeals for the District of Columbia in passing upon the question whether a taxicab company was a common carrier within the meaning of the Public Utilities Act and whether its business should be and is subject to regulation by the Public Utilities Act said:

> "We think the Company is a common carrier within the scope, intent and meaning of the Public Utilities Act. Its business is public, and not private, and that business should be and is subject to reasonable regulation for the benefit of the public."

Certiorari was granted in that case and this Court in *Terminal Taxicab Company vs. Kutz* 241 U.S. 252, 60 L. Ed. 984, in passing upon the question said:

> **"The plaintiffs taxicabs, when employed as above stated (are) a public utility by ancient usage and underderstanding (Mumm vs. Illinois 94 U.S. 113, 125; 24 L. Ed. 77, 84) as well as common carriers by the manifest meaning of the Act. The plaintiff is an "agency" for public use for the convenience of persons, etc.; and none the less that ~~shall~~ only convey one group of customers in one vehicle."

Thus, as long ago as February 1915, the Court below held, contrary to the opinion in this case, that the business here involved is that of a common carrier and a public utility within the Public Utilities Act, and this Court has ruled likewise.

II

The regulations of the Respondent, Office of Price Administration, when properly interpreted do not apply to the rental of Petitioners taxicabs engaged in the business of a public utility and common carrier, and subject to the exclusive regulatory jurisdiction of the Public Utilities Commission.

We are here concerned primarily with Maximum Price Regulation 165, as amended; Revised Maximum Price Regulation 165; Maximum Price Regulation 571; and Revised Supplementary Regulation 11, as amended.

Maximum Price Regulation 165 was issued June 23, 1942 effective July 1, 1942 (7 F.R. 4734)and was amended August 13, 1942 (7 F.R. 6428) and July 29, 1943 (8 F.R. 10671). In the last amendment the regulation provides that:

> Sec. 1499.101
>
> (c) *Services covered.* This Maximum Price Regulation No. 165 as amended shall apply to all rates and charges for the following services, except when such services are rendered as an employee:
>
> * * * * (4) Automotive vehicles (including but not

limited to automobiles, busses, motorcycles, semi-trailers, tractors, trailers and trucks)—lubrication, maintenance, painting, rental, ***

Sec. 1499.107

Services excepted from Maximum Price Regulation 165 as amended.

The provisions of this regulation shall not apply to the services excepted from the General Maximum Price Regulation by Revised Supplementary Regulation 4 or Revised Supplementary Regulation 11, or any amendments thereto insofar and for such time as such services are excepted from those supplementary regulations.

On August 1, 1944 Maximum Price Regulation 165 as amended—Services—was replaced by Revised Maximum Price Regulation 165 issued July 1, 1944 effective August 1, 1944 (9 F.R. 7439) the pertinent parts of which are:

"Maximum Price Regulation 165 as amended, services, is redesignated Revised Maximum Price Regulation No. 165 (Services) and is revised and amended to read as follows:

Maximum Price Regulation No. 165 as amended covered only those services specifically listed therein. Most other services subject to price control were covered by the General Maximum Price Regulation, and a relatively small number of other OPA regulations. This revision brings under Revised Maximum Price Regulation No. 165 (Services) most of the services which were heretofore under the General Maximum Price Regulation.

Sec. 1. *Services Covered.* This regulation covers the prices charged for all services except:[1] (a) Services exempted by Revised Supplementary Regulation No. 11; (b) Services sold to a governmental agency

[1]By amendment No. 3 (September 9, 1944, 9 F.R. 11173) the provision was changed to read: "This regulation covers all services previously covered by Maximum Price Regulation No. 165 as amended, Services. It also covers all other services except:"

pursuant to (1) a secret contract or subcontract as provided in Supplementary Order No. 42, and (2) an emergency purchase subject to the conditions of Sec. 4.3 (f) of Revised Supplementary Regulation No. 1; (c) Services specifically covered by other OPA regulations; (d) The following services which remain under the General Maximum Price Regulation:

(1) Transportation services of contract carriers;

(2) Storage, warehousing and terminal services, and services incident thereto.

(3) The furnishing of electricity, gas, light, heat, power or water when the furnishing thereof is not subject to the requirements set forth in paragraph (c) of Revised Supplementary Regulation No. 11, sec. 1499.46.

Sec. 2. *Prohibitions.* On and after August 1, 1944, regardless of any contract or other obligation:

(a) You may not sell any service covered by this regulation at a price higher than your maximum price.

(b) No person in the course of trade or business may buy any service covered by this regulation at a price higher than the maximum price.

Of course, you may charge lower prices than your maximum prices at any time.

Maximum Price Regulation 571 was issued January 29, 1945 effective February 3, 1945 (10 F.R. 1150). This regulation replaced and superseded the previous general "Services" regulation with respect to "rental" of certain types of commercial motor vehicles. The Statement of Considerations issued in connection with Maximum Price Regulation 571 states insofar as here applicable:

"Section 1. *General statement.* The purpose of this regulation is to establish maximum prices for the lease or rental of "commercial motor vehicles." Gen-

erally the rental of a "commercial motor vehicle" does not include the furnishing of a driver and except as hereinafter provided in section 2, the rental of a "commercial motor vehicle" with driver is covered as a transportation service by the General Maximum Price Regulation of any applicable regulation subsequently issued.

Section 2. *Services covered*—(a) *General Applicability.* This regulation applies to the lease or rental, without driver, except as hereinafter provided, of the types of commercial motor vehicles" defined in section 3 (d).

* * * *

(e) *Exceptions.* This regulation shall not apply to:

(1) The rental or lease of any dump truck used on construction or road maintenance projects.

(2) Any transaction which is a sale of a "commercial motor vehicle," as in the case of a lease which is a substitute for a conditional sales contract, and in connection with which no maintenance or operating services are furnished. However, a lease containing an option to purchase is subject to the provisions of this regulation.

(3) Any service which has been classified by a municipal, state, or federal regulatory body as a for-hire carrier service.

(4) Leasing of trucks between carriers pursuant to directions of the Office of Defense Transportation under the provisions of the Administrative Order O.D.T. 10, issued March 10, 1944, General Order O.D.T. 3 Revised, as amended March 10, 1944, and General Order O.D.T. 17, as amended March 10, 1944.

Section 3. *Definitions.* As used in this regulation.

* * * *

(d) "Commercial motor vehicle" means any passenger automobile, funeral car, hearse, taxicab, bus,

truck, tractor, trailer, or semi-trailer or any combination thereof propelled or drawn by mechanical power and constructed for the purpose of transporting property or persons."

• • • •

Sec. 16. *Relation to other regulations.* This regulation supersedes the General Maximum Price Regulation and Revised Maximum Price Regulation 165 with respect to all services covered by this regulation.[2]

This regulation establishes maximum prices for the rental of taxicabs, passenger cars, funeral cars, hearses, buses, trucks, tractors, trailers, semi-trailers and any combinations thereof.

The regulation is a segregation and restatement of the maximum price provisions relating to charges for the rental of commercial motor vehicles, whose maximum prices heretofore were determined under MPR 165 or RMPR 165. Issuance of this separate regulation devoted exclusively to this particular subject matter is designed to facilitate administrative actions, to promote compliance, and, in general, to make price control in this field more effective than has been feasible under MPR 165—Services, which covers a wide field of unrelated services."

Subsequent to the opinion of this Court in *Davies Warehouse Company vs. Bowles* 321 U.S. 144 in which this court held that the Davies Warehouse Company was a public utility, subject to state regulation, and therefore exempt from Office of Price Administration jurisdiction, the respondent issued amendments to Revised Supplementary Regulation 11 in which amendments the respondent assumed regulatory jurisdiction over rates and charges of businesses not classified or regulated as public utilities or common carriers. It is correct to say that the various regulations have been interpreted by the Office of Price Administration as

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[2]The basic pricing provisions, as in the preceding Regulations, establish the March 1942 "base date" or "freeze" (Sec. 4). Provision is also made for adjustments (Sec. 13), and records and reports (Sec. 15).

bringing within its regulatory jurisdiction the rental of taxicabs. However, none of the regulations establishes jurisdiction in the Office of Price Administration over charges, rates or rentals of taxicabs *which are engaged in the business of a public utility and a common carrier, classified as such, and subject to the jurisdiction and regulatory power of a duly constituted Public Utilities Commission—as is most assuredly the case here.* District of Columbia Code 1940 Edition, Title 43, Sec. 103 et seq., and Title 47, Sec. 2331 (a), (d). See also order of the Public Utilities Commission of the District of Columbia dated April 24, 1942 for an investigation into the matter of rentals, charges and practices of taxicab companies and associations—Public Utilities Commission No. 2942-149 Formal Case 319:

ORDER OF INVESTIGATION

"In order to establish fair and reasonable rentals, charges and practices among and between the various taxicab companies, associations, and others, and their members, lessees, operators and drivers, and to prevent any charges or practices which are unfair or otherwise interfere with the operations of taxicabs as a public utility.

IT IS ORDERED:

Section 1. That an investigation be instituted into the terms, conditions and reasonableness of, and practices relating to,

(a) Contracts, agreements or understandings covering the rentals and sales of taxicabs by companies and associations or their subsidiaries to drivers, operators, members or lessees during the period from January 1, 1941 to date.

(b) Contracts, agreements or understandings covering, all practices relating to, the purchase of gasoline, oil, tires, accessories, insurance, etc. by drivers, operators, lessees from taxicab companies, associations or their subsidiaries.

(c) Requirements of, dues for and benefits derived

from, membership in taxicab associations.

(d) Any other contracts, agreements, understandings or practices, not specifically provided for herein, affecting or relating to the operations of taxicabs in the District of Columbia.

Section 2. That the cost of this investigation shall be assessed against the taxicab companies, associations or others investigated on the basis of the number of cabs involved, in accordance with an order to be issued.

Section 3. That this order take effect immediately.

By the Commission:
E. J. MILLIGAN,
Executive Secretary."

This is conclusive that the Public Utilities Commission has recognized and exercised its jurisdiction over the subject matter here involved.

CONCLUSION

The petitioners are engaged in the business of a public utility and common carrier and are under the exclusive jurisdiction of the Public Utilities Commission in the District of Columbia. Accordingly, the regulations of the respondent, when properly construed, do not apply to petitioners' business. For these reasons the judgment of the Court below should be reversed and the Court directed to dismiss the complaints.

Respectfully submitted,

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INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 576

FRED R. REEVES, JOHN H. BRADLEY, WILLIAM L. DRISCOLL AND LYNWOOD C. FRITTER, PETITIONERS

v.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE PRICE ADMINISTRATOR IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the District Court is not officially reported and appears at pp. 7–8 of the Record. The opinion of the United States Court of Appeals for the District of Columbia (R. 24–26) is reported at 151 F. 2d 16.

JURISDICTION

The judgment of the Court of Appeals was entered on July 9, 1945 (R. 28). A petition for

rehearing was denied on August 6, 1946 (R. 31). The petition for a writ of certiorari was filed in this Court on November 1, 1945. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

STATUTES AND REGULATIONS INVOLVED

The case involves the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App., Supp. IV, Sec. 901 et seq.), as amended by the Stabilization Extension Act of 1944 (58 Stat. 632, 50 U. S. C. App., Supp. IV, Sec. 921, et seq., and by the Stabilization Extension Act of 1945 (Pub. Law 108, 79th Cong. 1st Sess.); the Stabilization Act of 1942 (56 Stat. 765, U. S. C. App., Supp. IV, Sec. 961, et seq.), renewed by the Stabilization Extension Acts of 1944 and 1945, *supra;* the District of Columbia Code, 1940 Edition, Title 43, Secs. 103, 111, 122, and Title 47, Secs. 2331 (a), 2331 (b); Maximum Price Regulation No. 165 as amended—Services (7 F. R. 4734, 6428, 8 F. R. 10671); Revised Maximum Price Regulation No. 165 (9 F. R. 7439); Maximum Price Regulation No. 571 (10 F. R. 1150); Revised Supplementary Regulation No. 11 (7 F. R. 6426, 9 F. R. 3331 and 9 F. R. 5722). The pertinent provisions of the several statutes and regulations are discussed in the Argument and are set forth therein and in the Appendix, *infra,* pp. 18–36. For convenience of reference the Emergency Price Control Act of

1942, as amended, is hereinafter sometimes referred to as "the Act."

QUESTION PRESENTED

Whether maximum price regulations which in terms apply variously to charges for rentals of automotive vehicles or taxicabs, and which exempt charges for "any service * * * when performed by a person appropriately classified as a public utility and subject to regulation as such, maximum rates or charges for such service having been established, or otherwise regulated, by a federal, state or municipal authority having jurisdiction over such rates or charges," apply to charges for the rental of taxicabs to drivers in the District of Columbia, where by statute the term "public utility" includes "common carrier" and the latter includes persons "owning * * * any agency * * * for public use for the conveyance of persons * * * for hire," but where maximum rates for such taxicab rentals are not actually established or otherwise regulated by any governmental authority other than the Price Administrator.

STATEMENT

The Price Administrator brought these suits against petitioners in the District Court for the District of Columbia, alleging in substance that petitioners were the owners of taxicabs which they rent to cab drivers at a certain sum per day

or other convenient periods of time for the use by the cab drivers in their trade or business of transporting passengers for hire in the District of Columbia; that petitioners had violated the Emergency Price Control Act of 1942 by charging for the rental of such taxicabs rents or prices in excess of those prescribed by regulations promulgated pursuant to the Emergency Price Control Act and by failing to prepare and keep records and statements as required by such regulations. A judgment for statutory damages pursuant to the provisions of Section 205 (e) of the Emergency Price Control Act as well as injunctions pursuant to the provisions of Section 205 (a) of the Act were prayed for. (R. 2, 11, 14, 19.) The petitioners moved to dismiss the complaints on the grounds that they failed to state claims upon which relief could be granted, and that petitioners' business, being that of a public utility and common carrier, was subject to the jurisdiction of the Public Utilities Commission of the District of Columbia and was expressly exempted from the provisions of the Emergency Price Control Act (R. 6, 13, 16, 21). The motions were overruled (R. 8), and thereupon, pursuant to leave granted, petitioners appealed to the Court of Appeals for the District of Columbia (R. 10). That court affirmed the orders overruling the motions to dismiss the complaints (R. 27–28).

No evidence was taken in the courts below, but the decisions of both the district court and the

court of appeals were based in part on facts of which those courts took judicial notice (R. 7, 24). These facts are as follows: The fares charged by the drivers to whom petitioners rent their taxicabs are regulated by the Public Utilities Commission of the District of Columbia. The rental or prices, however, which petitioners charge the cab drivers to whom they rent the taxicabs are not regulated. At one time the Public Utilities Commission issued an order providing for a hearing as to the reasonableness of the rentals charged by persons renting taxicabs to drivers whose charges are regulated by the Commission, but no action was ever taken as a result of this order (Appendix, *infra,* pp. 37–39).

ARGUMENT

The decision of the court below is clearly right and is not in conflict with the decision of any other appellate court. Moreover, it does not present any substantial question of law which has not already been decided by this Court.

1. The only question raised here [1] is whether or not regulations issued by the Price Administrator

[1] In the courts below petitioners made two contentions; first, that the regulations issued under the Act exempted the rental of taxicabs and, second, that if the regulations in fact applied to petitioners they were invalid under the provisions of Section 302 (c) of the Act which exempts common carriers and public utilities. In this Court petitioners, recognizing that only the Emergency Court of Appeals would have jurisdiction over the issue of validity, expressly concede (Pet. p. 9) that the validity of the regu-

under the provisions of the Act limit the charges which may be exacted by the petitioners for the use of taxicabs which they rent the drivers or operators. It is conceded that the operators of the taxicabs which the petitioners rent are public utilities; that the fares charged by such operators, as well as the services which they perform, are regulated by the Public Utilities Commission of the District of Columbia; and that by reason of express exemptions contained in the regulations issued by the Price Administrator under the Act such regulations do not apply to them. The rentals charged by petitioners, however, are not controlled or regulated by the Public Utilities Commission of the District of Columbia or any other regulatory officer or agency, and the regulations which have from time to time been issued by the Price Administrator under the Act expressly purport to apply to them.

The violations charged in the complaints were alleged to have occurred between August 1, 1943, and August 25, 1944. (R. 2, 11, 14, 19). During this period the applicable regulations were as follows:

a. *Maximum Price Regulation No. 165, as amended—Services,* issued June 23, 1942 (7 F. R. 4734), reprinted as amended August 13, 1942 (7 F. R. 6428). This regulation (as amended July

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lations cannot be attacked in this proceeding. See *Bowles v. Seminole Rock & Sand Co.*, 325 U. S. 410, 418–419.

29, 1943, 8 F. R. 10671), provided insofar as here pertinent as follows:

§ 1499.101 *Prohibition against dealing in services above maximum prices.* On and after July 1, 1942, regardless of any contract or other obligation.

(a) *Sales.* No "person" shall "sell" or supply any of the "services" set forth in paragraph (c) of this section at a price higher than the maximum price permitted by this Maximum Price Regulation No. 165 as amended.

* * * * *

(c) *Services covered.* This Maximum Price Regulation No. 165 as amended shall apply to all rates and charges for the following services, except when such services are rendered as an employee:

* * * * *

(4) Automotive vehicles (including but not limited to automobiles, busses, motorcycles, semi-trailers, tractors, trailers and trucks)—lubrication, maintenance, painting, *rental.* * * *. [Italics supplied.]

* * * * *

SERVICES EXCEPTED FROM THIS REGULATION

§ 1499.107 *Services excepted from Maximum Price Regulation 165 as amended. The provisions of this regulation shall not apply to the services excepted from the General Maximum Price Regulation by Revised Supplementary Regulation No. 4*

> [Reference to R. S. R. No. 4 added at 7 F. R. 9972] *or Revised Supplementary Regulation No. 11,* or any amendments thereto, insofar and for such time as such services are excepted by those supplementary regulations. [Italics supplied.]

If the exception contained in Revised Supplementary Regulation No. 11[2] referred to in the provision italicized above is inapplicable, a question which we discuss at length *infra,* pp. 12–16, it is plain that petitioners' charges were subject to and limited by the "Services" regulation. Clearly the automobiles or taxicabs which petitioners rent to cab drivers are automotive vehicles and the services which petitioners perform constitute the rental of such automotive vehicles. If there were any doubt as to whether the Administrator intended that the sums charged as rental for taxicabs should be limited and regulated by the "Services" regulation, that doubt was resolved by an interpretation which he issued on September 1, 1942, less than one month after the issuance of the regulation. The interpretation reads as follows (OPA Service, p. 15:505):

> Taxicab rentals and storage services. Where a taxicab company owns cabs and leases them to drivers at a stipulated daily rental, the transaction is covered by MPR No. 165, as a rental of automobiles.

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[2] Revised Supplementary Regulation 4 related solely to sales to agencies of the United States and is wholly irrelevant.

This interpretation has never been revoked or rescinded. In fact, it was republished on November 15, 1944 in the official OPA Coordination Service ("Digest of Interpretations of Specific Price Schedules and Regulations") p. 22:1, and again as late as February, 1945 in the new OPA Service Desk Book "General" p. 50,401. Since the Administrator in issuing the interpretation was construing a regulation which he himself issued, the interpretation is controlling, unless clearly erroneous or clearly inconsistent with the regulation. *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410, 417. The interpretation is manifestly not inconsistent with the regulation nor is it clearly erroneous. Indeed, the plain language of the regulation compels the construction which the Administrator has placed upon it.

b. *Revised Maximum Price Regulation 165* (9 F. R. 7439)[3]. This regulation replaced Maximum

[3] Revised Maximum Price Regulation 165 was superseded as of February 3, 1945, insofar as it pertained to the rental of commercial vehicles, by Maximum Price Regulation 571 (10 F. R. 1150). This regulation covers the rental of specific categories of automotive vehicles, including taxicabs. In issuing the regulation, the Administrator in the Statement of Considerations which he filed with the Division of the Federal Register concurrently with the promulgation of the regulation stated that he was merely making "a segregation of commercial vehicles" (Statement of Considerations, Appendix, pp. 34–36, *infra*). Maximum Price Regulation No. 571 was issued subsequent to the violations alleged in the complaint. Its provisions would be operative for the purposes of these proceedings if injunctions were to be issued against petitioners.

Price Regulation No. 165 as of August 1, 1944. In pertinent part it provided as follows:

> § 1. *Services covered.* This regulation covers the prices charged for all services except:[4]
>
> (a) Services exempted by Revised Supplementary Regulation No. 11.
>
> (b) Services sold to a government agency pursuant to (1) a secret contract or subcontract as provided in Supplementary Order No. 42, and (2) an emergency purchase subject to the conditions of § 4.3 (f) of Revised Supplementary Regulation No. 1.
>
> (c) Services specifically covered by other OPA regulations.
>
> (d) The following services which remain under the General Maximum Price Regulation:
>
> (1) Transportation services of contract carriers;
>
> (2) Storage, warehousing and terminal services, and services incident thereto;
>
> (3) The furnishing of electricity, gas, light, heat, power or water when the furnishing thereof is not subject to the requirements set forth in paragraph (c) of Revised Supplementary Regulation No. 11, § 1499.46.

The Statements of Considerations which the Administrator filed with the Division of the Federal

[4] By Amendment No. 3 (September 9, 1944, 9 F. R. 11173) the provision was changed to read: "This regulation covers all services previously covered by Maximum Price Regulation No. 165 as amended, Services. It also covers all other services except:"

Register in accordance with the requirements of Section 2 (a) of the Act when he issued the revised regulation (O. P. A. Service p. 15:146 B) stated in part as follows:

> Maximum Price Regulation No. 165 as amended—Services, has been revised and is issued as Revised Maximum Price Regulation No. 165 (Services). The new regulation maintains the substance of many of the provisions of the prior regulation. However, the language has been simplified and technical phraseology has been avoided wherever possible. The regulation has also been shortened.
>
> All services subject to price control except three types of services listed as remaining under the General Maximum Price Regulation and those services specifically covered by some other OPA regulation, are now covered by the revised Services regulation.

In other words "Revised Maximum Price Regulation 165" continued in force the provisions of the original "Services" regulation insofar as concerns the coverage of any business, prices or charges. Section 1499.101 (c) (4) of the original regulation, which expressly applied to "rental of "automotive vehicles", was adopted by reference in the "Revised" regulation. The latter regulation did not recapitulate the specific cate- (c) of the original regulation, but achieved the same coverage by its general provisions set forth gories of services set forth in Section 1499.101

at p. 10, *supra,* comprehending "all services" except those specifically exempted. Therefore, if petitioners' charges were subject to the original regulation they were also subject to and governed by the revised regulation, unless, of course, they were excepted by Revised Supplementary Regulation No. 11. Certainly none of the other exceptions in the regulations, as set forth above, are applicable.

c. *Revised Supplementary Regulation 11 (7 F. R. 6426, 9 F. R. 3331, 5722).* This is a revision of Supplementary Regulation No. 11 which was originally issued on June 16, 1942 (7 F. R. 4543) as one of a series of special regulations supplementing the provisions of the General Maximum Price Regulation (7 F. R. 3153), issued in April 1942. Its purpose was in part to construe the statutory exemptions from price control contained in section 302 (c) of the Act. When the successive "services" regulations involved in these suits (i. e. Maximum Price Regulation 165 and Revised Maximum Price Regulation 165) were issued, they contained clauses incorporating the exemptions created by Revised Supplementary Regulation No. 11 as seen above. The only provisions of Revised Supplementary Regulation 11 which need be considered are sub-paragraphs (91), (92) and (141) of paragraph (c). These sub-paragraphs read as follows:

> [The exemption shall apply to]
>
> (91) Transportation of commodities by rail, water, motor, pipe line, or other means of conveyance * * *
>
> * * * * *
>
> (92) Transportation of persons * * *
>
> * * * * *
>
> (141) Any service not excepted by other subparagraphs of this supplementary regulation when performed by a person appropriately classified as a public utility and subject to regulation as such, maximum rates or charges for such service having been established, or otherwise regulated, by a federal, state, or municipal authority having jurisdiction over such rates or charges.[5]

It is evident from the foregoing that the petitioners are not entitled to the exemption which they claim. Their business is obviously not "the transportion of commodities", nor is it "the transportation of persons"—although the lessee-drivers of the cabs are engaged in such transportation. It is instead the rental of equipment or automotive vehicles. Petitioners transport nothing and no one.

Nor can petitioners claim either (1) that they are "appropriately classified as a public utility

[5] Paragraph c (141) was added as a result of this Court's decision in *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144. See Appendix, *infra*, pp. 24–34. As noted by the court below (R. 25, n. 5), the provision (9 F. R. 3331, 5722) conforms to, and in effect summarizes this Court's construction of the statutory exemption of "any common carrier or other public utility" contained in Section 302 (c) of the Act.

and subject to regulation as such * * * by a federal, state, or municipal authority having jurisdiction over [their] rates or charges"; or (2) that their "maximum rates or charges * * * [have] been established, or otherwise regulated" by any such regulatory body. Both of the foregoing requirements must be met by any person invoking the exemption established by sub-paragraph (141) of Revised Supplementary Regulation No. 11. Petitioners meet neither.

Petitioners' claim that, as owners of an "agency or agencies for public use for the conveyance of persons or property within the District of Columbia for hire" they possess the status of "common carrier" within the meaning of Title 43, Section 111, of the District of Columbia Code, is obviously not responsive to the explicit requirements of subparagraph (141). The Public Utilities Commission of the District of Columbia, to which petitioners point as the authorized regulatory body, has not classified petitioners in any manner whatever (not to say "appropriately") as a "public utility". Although taxicabs may have properly been classified as common carriers within the meaning of Section 111 (*Terminal Cab Co.* v. *Harding,* 43 App. D. C. 120, modified *sub nom. Terminal Cab Co.* v. *Kutz,* 241 U. S. 252), it does not follow that those who rent cars to drivers are a public utility. This Court has expressly held that one who rents cars or other transportation equipment to a common carrier is not a common

carrier or public utility. *Ellis* v. *Interstate Commerce Commission,* 237 U. S. 434; *Tank Car Corporation* v. *Terminal Co.,* 308 U. S. 422, 428. Petitioners cannot, therefore, claim to have been "*appropriately*" classified as a public utility within the meaning of the regulation.[6]

But even if it be conceded, *arguendo,* that petitioners are so "appropriately classified," they still fail of exemption under subparagraph (141) of Revised Supplementary Regulation No. 11 because their rates have not been "established or otherwise regulated" by an authorized regulatory body other than the OPA. As found by both courts below, and as shown by the documents set forth at pp. 36–39 of the Appendix, *infra,* the Pub-

[6] This is not to say that the Public Utilities Commission could not if it saw fit to do so regulate petitioners' charges. Congress could confer upon the Public Utilities Commission the power to regulate petitioners' charges. Whether Congress has done so is a question which lies wholly outside the issues of this proceeding. Since petitioners expressly concede that the validity of the regulations cannot be challenged in this proceeding, the only question presented for decision is whether the regulations, properly construed, purport to cover petitioners' charges. Should the Public Utilities Commission undertake to regulate petitioners' charges, the Administrator following a policy which he has consistently pursued since the decision of this Court in *Davies Warehouse Co.* v. *Bowles,* 321 U. S. 144, would abandon all attempts to regulate petitioners' charges, without undertaking to pass on the question whether the Commission's action was within the scope of its statutory powers, and regardless of whether the Emergency Price Control Act, properly construed and applied to this situation, would require such a withdrawal of control.

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lic Utilities Commission of the District of Columbia has never regulated the charges or rentals at which taxicabs may be rented to drivers (R. 7, 25). Petitioners do not assert the contrary, but only that the Commission has undertaken to investigate the subject.

The regulations, therefore, expressly purport to apply to the charges made by petitioners, and petitioners are not entitled to the exemption which they claim. The courts below were right in so holding.

2. The decision of the court below is clearly not in conflict with the decision of this Court in *Terminal Cab Co.* v. *Kutz,* 241 U. S. 252. That case merely held that a person who operates a taxicab and transports or carries passengers for hire is a public utility. No one questions this. But petitioners do not operate taxicabs, nor do they carry or transport passengers or property. The decision on which petitioners rely, therefore, has no bearing on any of the issues in this proceeding.

3. Nor is the decision below in conflict with the decision of this Court in *Davies Warehouse Co.* v. *Bowles,* 321 U. S. 144, which came from the Emergency Court of Appeals and which did not involve the interpretation but the validity of a regulation fixing the charges for warehousing services. The Court below observed that subparagraph (141) of Revised Supplementary Regulation No. 11 "cor-

rectly applies the standards laid down for the Administrator in the *Davies* case." (R. 25, n. 5.) See the Statements of Considerations for Amendments 45 and 50 to Revised Supplementary Regulation No. 11 (Appendix, *infra*, pp. 24–34).[7]

CONCLUSION

It is respectfully submitted that no reason exists which would warrant granting certiorari in these cases, and that the petition should be denied.

J. HOWARD MCGRATH,
Solicitor General.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement,
MILTON KLEIN;
Director, Litigation Division,
ABRAHAM GLASSER,
Solicitor, Litigation Division,
ALBERT M. DREYER,
Attorney,
Office of Price Administration.

DECEMBER, 1945.

[7] The court below also noted that petitioners did not there rely on the exemptions established by subparagraph (141). The Administrator drew the Court's attention to these exemption provisions in the interests of a full presentation and in order to eliminate any question of a possible exemption for petitioners under the several regulatory provisions sought to be applied to petitioners' business.

APPENDIX

1. *The Emergency Price Control Act of 1942* (56 Stat. 23, 50 U. S. C. App., Supp. IV, Sec. 901 et seq.), as amended by the *Stabilization Extension Act of 1944* (58 Stat. 632, 50 U. S. C., App., Supp. IV, Sec. 921) and by the *Stabilization Extension Act of 1945* (Pub. Law 108, 79th Cong., 1st Sess.)

PROHIBITIONS

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

* * * * *

ENFORCEMENT

SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the

appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

* * * * *

SEC. 205. (e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however,* That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation. * * *

SEC. 302. As used in this Act—

* * * * *

(c) The term "commodity" means commodities, articles, products, and materials (except materials furnished for publication by any press association or feature service, books, magazines, motion pictures, periodicals and newspapers, other than as waste or scrap), and it also includes services rendered otherwise than as an employee in connection with the processing, distribution, storage, installation, repair, or negotiation of purchases or sales of a commodity, or in connection with the operation of any service establisment for the servicing of a commodity: *Provided,* That nothing in this Act shall be construed to authorize the regulation of (1) compensation paid by an employer to any of his employees, or (2) rates charged by any common carrier or other public utility, or (3) rates charged by any person engaged in the business of selling or underwriting insurance, or (4) rates charged by any person engaged in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting station, a motion-picture or other theater enterprise, or outdoor advertising facilities, or (5) rates charged for any professional services.

2. *The Stabilization Act of 1942* (56 Stat. 765, 50 U. S. C. App., Supp. IV, Sec. 961 et seq.), renewed by the *Stabilization Extension Acts of 1944 and 1945, supra.*

SECTION 1. In order to aid in the effective prosecution of the war, the President is authorized and directed, on or before No-

vember 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this Act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942. The President may, except as otherwise provided in this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: *Provided,* That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase.

3. *District of Columbia Code, 1940 Edition.*

§ 43–103 [26: 3].

The term "public utility" as used in chapters 1–10 of this title shall mean and embrace every street railroad, street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electrical corporation, water power company, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipe line company. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

* * * * *

§ 43–111 [26: 11].

The term "common carrier" when used in chapters 1–10 of this title includes express companies and every corporation, street

railroad corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any agency or agencies for public use for the conveyance of persons or property within the District of Columbia for hire. * * *

* * * * *

§ 43–122 [26: 22].

Chapters 1–10 of this title shall apply to the transportation of passengers, freight, or property from one point to another within the District of Columbia, and any common carrier performing such service; and chapters 1–10 of this title shall be so applicable and be so construed as to be free from conflict with those provisions of the Constitution of the United States and the laws in pursuance thereof relating to interstate commerce. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1.)

* * * * *

§ 47–2331 [20: 1731].

(a) Every passenger vehicle for hire licensed under this section shall be considered a public vehicle.

(b) Any person, partnership, association, trust, or corporation operating or proposing to operate any vehicle or vehicles not confined to rails or tracks for the transportation of passengers for hire over all or any portion of any defined route or routes in the District of Columbia, except when such vehicle or vehicles are to be operated solely for sight-seeing purposes, shall, on or before the 1st day of October in each year, or before commencing such operation, submit to the Public Utilities Commission of the District of Columbia, in

triplicate, an application for license, stating therein the name of such person, partnership, association, trust, or corporation, the number and kind of each type of vehicle to be used in such operation, the schedule or schedules and the total number of vehicle-miles to be operated with such vehicles within the District of Columbia during the twelve month period beginning with the 1st day of November in the same year. The Public Utilities Commission shall thereupon verify and approve, or return to the applicant for correction and resubmission, each such statement, and when approved, forward one copy thereof to the commissioners of the District of Columbia or their designated agents and return one copy to the applicant. Upon receipt of the approved copy, and prior to the 1st day of November in the same year, or before commencing such operation, each such applicant shall pay to the collector of taxes, in lieu of any other franchise, personal or license tax, in connection with such operation, the sum of eight-tenths of 1 cent for each vehicle-mile proposed to be operated in the District of Columbia in accordance with the application as approved. Upon presentation of the receipt for such payment, the commissioners of the District of Columbia or their designated agent shall issue a license authorizing the applicant to carry on the operations embodied in the approved application. No increase of operations shall be commenced or continued unless and until an application similar to the original and covering such increase in operation shall have been approved and forwarded in the same manner and the corresponding additional payment made and license issued. No license shall be issued under the terms

of paragraph (b) of this section without the approval of the Public Utilities Commission of the District of Columbia.

4. The Statements of Considerations for Amendments 45 and 50 to Revised Supplementary Regulation No. 11 are as follows (OPA Service 11:290–R et seq., 11:290–V et seq.):

AMENDMENT No. 45

Amendment No. 45 to Revised Supplementary Regulation No. 11 (which has been filed with the Division of the Federal Register) amends subparagraph (91) and adds subparagraph (140) and subparagraph (141) to paragraph (b) of Section 1499.46 of Revised Supplementary Regulation No. 11 to the General Maximum Price Regulation. It also adds a new paragraph (c) to that section, the present paragraphs (c) and (d) being redesignated (d) and (e) respectively.

The Emergency Price Control Act, in Section 302 (c) (2), exempts from regulation "the rates charged by any common carrier or other public utility." The Office of Price Administration interpreted the term "public utility" to include all businesses which were traditionally regarded as public utilities and which were generally subject to rate regulation. Typical among these were companies furnishing electric light and power, gas, water, and heat.

This construction of the Act was believed to make for uniformity in the control of the maximum prices of the businesses involved. Regardless of variations in state law, a given industry throughout the nation was either subject to, or exempt from, price

regulation under the Emergency Price Control Act of 1942.

In the light of this legal interpretation the General Maximum Price Regulation exempted from price control the services furnished by such public utilities. It likewise exempted common carrier and communication services. It is to be noted that none of these exemptions depended on whether in a particular state the rates of the carrier or other utility were in fact regulated.

On January 31, 1944, the Supreme Court of the United States held that the Davies Warehouse Company, a California corporation, doing a public warehouse business and declared by the law of California to be a public utility and whose maximum rates as such were regulated by the California Railroad Commission, was a public utility within the meaning of Section 302 (c) (2) of the Emergency Price Control Act of 1942 and consequently not subject to the General Maximum Regulation.

While the Court's opinion does not fully define the boundaries of OPA jurisdiction over common carriers and other public utilities, it is reasonably clear that, in the opinion of the Supreme Court, storage and other services when furnished by companies appropriately classified as public utilities and subject to regulation as such, and whose maximum rates or charges for such services have been established by, or otherwise regulated, a federal, state, or municipal authority having jurisdiction over such rates or charges, would not be subject to price control under the Emergency Price Control Act. Conversely, it is believed that these companies which do not meet

the above specifications would not be regarded by the Supreme Court as being "common carriers and other public utilities" within the meaning of Section 302 (c) (2). This view of the holding of the Davies case is embodied in Amendment No. 45 to Revised Supplementary Regulation No. 11 to the General Maximum Price Regulation.

It should be noted here that it is the position of OPA that, if any common carrier or other public utility is exempt from the Emergency Price Control Act, it is, nevertheless, subject to the Act of October 2, 1942.[1] Consequently, those companies which have heretofore been considered subject to the former Act and which under the Davies Co. cases are now to be considered "public utilities," must comply with the latter Act.

Where a company which has heretofore been considered a "public utility" under the Emergency Price Control Act because of the character of the service it performed is no longer to be regarded as such because it is not regulated or otherwise fails to meet the criteria indicated in the Davies Co. case, such a company is no longer subject to the Stabilization Act. However, if the service it performs falls within the definition of a "commodity" in § 302 (c)

[1] That Act (see Appendix, pp. 18–36) requires that any common carrier or other public utility, before making any general increase in its rates, must give the President or his representative thirty days' notice of such general increase and, furthermore, consent to the latter's timely intervention before the regulatory authority having jurisdiction over the rates involved. The Economic Stabilization Director is the President's representative and by directive the Price Administrator has been appointed to act for the Director.

of the Emergency Price Control Act, then the company becomes subject to regulation under that Act.

The authority thus recognized as vested in the Administrator extends to such utilities as electric light, power, gas, water, and heat companies and to common carriers of property by motor vehicles where these companies are not classified or regulated as public utilities or their maximum rates are not established or otherwise regulated, by any federal, state, or municipal body. Rather than undertake to exercise such authority by the issuance of regulations fixing new maximum prices, the Administrator has instead determined that these companies should remain subject to Procedural Regulation No. 11, issued pursuant to the Stabilization Act of October 2, 1942. This regulation requires notice of any general rate increases, accompanied by specified data relating thereto, be filed with OPA 30 days before the increase becomes effective. However, as to such unregulated carriers and utilities, the notice requirement will be predicated on Sections 2 (a) and 202 (a) of the Emergency Price Control Act. Their existing rates will become maximum prices which may be changed only by the giving of the 30-day notice as required.

Since adequate opportunity for consultation with the industries affected by this determination has been lacking, the 30-day notice requirement has been continued by an amendment to Revised Supplementary Regulation No. 11 which will remain in effect for 60 days, pursuant to the provision for temporary regulations in Section 2 (a) of the Price Control Act. During the 60 days following the effective date of the

amendment, the Administrator will take appropriate steps to consult with the industries concerned and, on the basis of such consultations and the notices heretofore or hereafter received, determine whether to continue the notice requirement in effect, to issue maximum price regulations if in any area or in any of the industries such action may appear necessary for stabilization, or to give complete exemption from regulation to some or all the industries affected.

Since the Emergency Price Control Act, by its definition of "commodity" in Section 302 (c), excludes from its application communication companies and carriers of passengers since neither type of service is rendered in connection with a commodity, the companies furnishing such services which are now exempt from the Stabilization Act because unregulated are also exempt from the Price Control Act because of the character of the services they render.

To indicate the status of utilities exempt from the General Maximum Price Regulation as regards Procedural Regulations No. 11, the amendment indicating these relationships has taken the form of a new paragraph (c) in Revised Supplementary Regulation No. 11. This lists in sub-paragraph (1), by reference to the appropriate subparagraphs in paragraph (b), those carriers and other public utility services for which notices of rate increases must be given under Procedural Regulation No. 11. Sub-paragraph (2) of the new paragraph (c) indicates those services which, though not under the Stabilization Act, are being required to remain subject to the notice requirements of Procedural Regulation No.

11, pursuant to the Price Control Act, for 60 days only. Sub-paragraph (3) lists those services which are exempt from both Acts.

Appropriate changes are being made in Procedural Regulation No. 11, concurrently with these amendments.

The accompanying amendment which accomplishes the purposes indicated above should be issued.

* * * * *

AMENDMENT No. 50

Effective March 24, 1944, the Office of Price Administration issued Amendment No. 45 to Revised Supplementary Regulation No. 11 which re-drew the jurisdictional lines of OPA in accordance with the decision of the United States Supreme Court in *Davies Warehouse Co.* v. *Bowles.* As the statement of considerations accompanying Amendment 45 indicated, it was premised on the view that, under the decision in the Davies Case, the exemption from price control accorded the rates of "common carriers and other public utilities" by Section 302 (c) (2) of the Emergency Price Control Act extended only to those persons who in furnishing services or commodities to the general public were appropriately classified as public utilities or common carriers and regulated as such, their maximum rates being established, or otherwise regulated by, federal, state or local authorities having jurisdiction.

Under this view, certain companies furnishing electricity, gas, light, heat, power, water, and various forms of transportation, which had heretofore been exempted from maximum price regulation because consid-

ered exempt under the Emergency Price Control Act, became subject to that Act because they were not under public utility or common carrier regulation and their maximum rates were not established or otherwise regulated by regulatory agencies. Pending further consideration of the problems presented by such companies, the Administrator determined to continue them under the same requirements as had previously been deemed applicable to them. These requirements were those relating to the 30-day notice of general rate increases prescribed in Procedural Regulation No. 11. Procedural Regulation No. 11 had been issued pursuant to the Stabilization Act of October 2, 1942. However, since the Stabilization Act's requirement of notice could be considered applicable only to those companies which were exempt from the Emergency Price Control Act, it became necessary to invoke the authority of the latter Act in order to impose the notice requirement on the unregulated companies which were subject to that Act but not to the Stabilization Act. This was done by Amendment 45 to Revised Supplementary Regulation No. 11.

Since Amendment 45 was issued under the authority of the Emergency Price Control Act and since the opportunity for consultation with the various unregulated segments of the numerous industries affected had not been adequate, the amendment was issued as a temporary maximum price regulation for which no prior consultation with industry is required by the Act. Being a temporary regulation, its duration was limited to 60 days. During the course of this period, the Office has endeavored to

carry out the intention declared in the statement of considerations to Amendment 45.

"* * * During the 60 days following the effective date of the amendment, the Administrator will take appropriate steps to consult with the industries concerned and, on the basis of such consultations and the notices heretofore or hereafter received, determine whether to continue the notice requirement in effect, to issue maximum price regulations if in any area or in any of the industries such action may appear necessary for stabilization, or to give complete exemption from regulation to some or all the industries affected."

Since March 24, 1944, the Office of Price Administration has undertaken numerous consultations with representative members of affected industries with respect to the institution of permanent price action. On the basis of these consultations, such notices of rate increases as have been received, and statistical and economic studies of costs, profits, margins and rate levels, the Administrator has concluded that the continuation of the notice requirements constitutes the most satisfactory of the three alternatives noted above with respect to most of the industries subject to the 60-day provision in Amendment 45. As to some of the industries, this conclusion has been reached only tentatively, but, pending further study, the notice requirements heretofore made are continued indefinitely by the accompanying amendment for all persons who, for the 60 days beginning March 24, 1944, have been subject to the requirement to give 30 days notice of general rate increases pursuant to Procedural Regulation No. 11.

To implement that decision, it has been necessary to revise certain of the subparagraphs of paragraph (b), Section 1499.46 of Revised Supplementary Regulation No. 11, which lists the services which have been subject to the temporary regulations. It has also been necessary to revise subparagraphs (1) and (2) of paragraphs (c) of Section 1499.46 which states the extent of the exemption granted to certain services listed in paragraph (b) and sets forth the requirements as to the giving of notice.

The revised subparagraphs of paragraph (b) do not state the extent of the exemption afforded the persons furnishing the services listed therein but instead refer for this purpose to paragraph (c). Under subparagraph (1) of paragraph (c), as revised, the exemption from the General Maximum Price Regulation with respect to all services heretofore subject to the temporary regulation depends on whether the companies furnishing those services offer them to the general public at rates or charges which are required by statute, regulation or judicial decision to be nondiscriminatory.

Subparagraph (1) of paragraph (c) also states the notice requirements with which all companies subject to that subparagraph must comply (except certain unregulated communication companies and carriers of passengers listed in subparagraph (3) of paragraph (c)). These notice requirements are imposed regardless of whether a company is subject to the Stabilization Act or the Emergency Price Control Act. Where, however, the company furnishing the service does not have its maximum rates established, or otherwise regulated, by a federal, state, or local authority having jurisdiction,

then the notice requirement, as subparagraph (2) makes clear, is imposed by the Emergency Price Control Act. However, in either case, the notice requirements are identical, being derived from the same provisions of Procedural Regulation No. 11. If, however, an increase in a rate or charge is made in disregard of these notice requirements then, though under either Act the increase is void, a company under the Stabilization Act would be subject to the enforcement provisions of that Act whereas the company under the Emergency Price Control Act would be subject to the enforcement measures therein provided, as would its commercial and industrial customers also. Subparagraph (2) of paragraph (c), as now revised, declares what had previously been indicated in the statement of considerations to Amendment 45, namely, that the rates and charges of unregulated companies lawfully existing on March 24, 1944, or subsequently increased pursuant to the requirements of Procedural Regulation No. 11, constitute maximum prices within the meaning of the Emergency Price Control Act and resort to higher rates and charges will subject both the company and its customers in the course of trade or business to the enforcement provisions of the Price Control Act. Since, of course, the notice procedure provides means whereby rates and charges may be increased, it is anticipated that there will be no violations arising out of refusals to abide by it.

In consulting with representatives of as many of the segments of the unregulated industries heretofore subject to the temporary regulation as it was practicable to reach, the Administrator found a willing-

ness to accept the continuation of the 30-day notice requirements to be very prevalent. The unregulated industries recognize, with him, the appropriateness of continuing as to them the same notice requirements as are applicable to the same industries in areas where common carrier or public utility rate regulation exists. Moreover, the 30-day notice requirement operates to postpone increases long enough to permit their careful consideration and to afford to the Administrator an opportunity to dissuade companies from making increases which he finds, on the basis of data submitted, not to be justifiable in the light of wartime conditions and the stabilization program. Finally, the information thus received, when added to that obtained from other sources, will enable the Administrator to determine whether any stricter controls are essential and, if so, to ascertain in what areas and segments of the affected industries the application of such controls might be required.

5. The pertinent provisions of Maximum Price Regulation No. 571, and of the Statement of Considerations therefor, read as follows:

Section 1. *General Statement.* The purpose of this regulation is to establish maximum prices for the lease or rental of "commercial motor vehicles." Generally, the rental of a "commercial motor vehicle" does not include the furnishing of a driver and except as hereinafter provided in section 2, the rental of a "commercial motor vehicle" with driver is covered as a transportation service by the General Maximum Price Regulation or any applicable regulation subsequently issued.

Sec. 2. *Services covered*—(a) *General applicability.* This regulation applies to the lease or rental, without driver, except as hereinafter provided, of the types of "commercial motor vehicles" defined in section 3 (d).

* * * * *

(c) *Exceptions.* This regulation shall not apply to:

(1) The rental or lease of any dump truck used on construction or road maintenance projects.

(2) Any transaction which is a sale of a "commercial motor vehicle," as in the case of a lease which is a substitute for a conditional sales contract, and in connection with which no maintenance or operating services are furnished. However, a lease containing an option to purchase is subject to the provisions of this regulation.

(3) Any service which has been classified by a municipal, state, or federal regulatory body as a for-hire carrier service.

(4) Leasing of trucks between carriers pursuant to directions of the Office of Defense Transportation under the provisions of the Administrative Order O. D. T. 10, issued March 10, 1944, General Order O. D. T. 3 Revised, as amended March 10, 1944, and General Order O. D. T. 17, amended March 10, 1944.

Sec. 3. *Definitions.* As used in this regulation:

* * * * *

(d) "Commercial motor vehicle" means any passenger automobile, funeral car, hearse, taxicab, bus, truck, tractor, trailer, or semi-trailer or any combination thereof propelled or drawn by mechanical power

and constructed for the purpose of transporting property or persons.

* * * * *

Sec. 16. *Relation to other regulations.* This regulation supersedes the General Maximum Price Regulation and Revised Maximum Price Regulation 165 with respect to all services covered by this regulation.

The official Statement of Considerations for MPR 571 stated in part as follows (OPA Service, Desk Book, "General," p. 80,331):

> This regulation establishes maximum prices for the rental of taxicabs, passenger cars, funeral cars, hearses, busses, trucks, tractors, trailers, semi-trailers and any combinations thereof.
>
> The regulation is a segregation and restatement of the maximum price provisions relating to charges for the rental of commercial motor vehicles, whose maximum prices heretofore were determined under MPR 165 or RMPM 165. Issuance of this separate regulation devoted exclusively to this particular subject matter is designed to facilitate administrative actions, to promote compliance, and, in general, to make price control in this field more effective than has been feasible under MPR 165—Services, which covers a wide field of unrelated services.

6. The following is an exchange of correspondence between counsel for the Price Administrator and the Executive Secretary of the Public Utilities Commission of the District of Columbia. The court below took judicial notice of this correspondence.

OFFICE OF PRICE ADMINISTRATION

WASHINGTON, 25, D. C.

MAY 24, 1945

E. J. MILLIGAN, *Executive Secretary*
Public Utilities Commission
of the District of Columbia
District Building
Washington, D. C.

DEAR MR. MILLIGAN: This is to state in writing the request which I made in our conference this afternoon for a letter from you addressed to me setting forth in detail the chronology and disposition of Formal Case No. 319, P. U. C.#4122/149, In the Matter of Rentals, Charges and Practices of Taxicab Companies and Associations. I should appreciate it particularly if your letter would indicate, with appropriate references to the official documents, whether the Commission ever actually instituted or conducted an investigation as a part of Formal Case #319 or whether the matter was dropped without any investigation or action by the Commission. It would also be most helpful to us if, in your letter, you would state whether it could be concluded from the official record of the proceedings in Formal Case #319 that the Commission's decision in 1942 not to pursue the matter to investigation or formal disposition signified any determination by the Commission, implicit or otherwise, respecting the substance or the merits of the subject matter involved in Formal Case #319.

I enclose a copy of the Price Administrator's brief in the case of *Reeves et al.* v. *Bowles,* now

pending in the United States Court of Appeals for the District of Columbia. I particularly invite your attention to the statements concerning the Public Utilities Commission, at page 34 of the enclosed brief.

Please accept my sincere thanks for your courtesy and assistance.

Very truly yours,

ABRAHAM GLASSER
Special Appellate Attorney

Enclosure

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

WASHINGTON 4, D. C.

MAY 26, 1945

Mr. ABRAHAM GLASSER
Special Appellate Attorney
Office of Price Administration
Washington 25, D. C.

DEAR SIR: This will acknowledge receipt of your letter of May 24, 1945, along with a copy of the brief of the Price Administrator in *Reeves et al.* v. *Bowles,* for which I thank you.

In reference to formal Case No. 319, P. U. C. No. 2942/149, you are advised that the official documents of the Commission show that Order No. 2255 was promulgated under date of April 24, 1942. The Commission's docket shows that no official action has been taken as the result of the order of investigation. The only definite conclusion that may be drawn from the docket entries is that no proceedings have been conducted pursuant

to Order No. 2256. The Commission has made no determination in respect of the matters covered by the order.

Very truly yours,

E. J. MILLIGAN
Executive Secretary

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